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13 ZACHARIAH JUDSON RUTLEDGE

14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 * * * * *

18 ZACHARIAH JUDSON RUTLEDGE,

19 Plaintiff,

20 vs.

21 COUNTY OF SONOMA, MICHAEL
22 POTTS, RUSSEL L. DAVIDSON,
23 JAMES PATRICK CASEY, CHRISTINE
24 M. COOK, J. MICHAEL MULLINS,
25 STEPHAN R. PASSALACQUA,
26 SONOMA COUNTY SHERIFF'S
DEPARTMENT, SONOMA COUNTY
DISTRICT ATTORNEY'S
OFFICE, and DOES 1 through 40.

Defendants.

) CASE NO.: CV 07-04274 CW

) **THIRD AMENDED COMPLAINT FOR**
) **DAMAGES FOR: VIOLATION OF CIVIL**
) **RIGHTS INTENTIONAL/NEGLIGENT**
) **INFLECTION OF EMOTIONAL**
) **DISTRESS; FALSE ARREST AND**
) **IMPRISONMENT; UNLAWFUL SEIZURE;**
) **SLANDER AND LIBEL; AND FOR**
) **DAMAGES UNDER THE CALIFORNIA**
) **BANE ACT AND THE CALIFORNIA**
) **TORT CLAIMS ACT**

) **DEMAND FOR JURY TRIAL**

INTRODUCTION

1 1. In the underlying criminal case, People v. Rutledge, Sonoma County Superior
2 Court case number MCR-443363 and related case no. SCR32528 (hereinafter “underlying
3 criminal matter”), Plaintiff, Zachariah Rutledge was acquitted of all charges connected to a
4 1998 murder of two Russian River-area men, ending a four-year legal battle. During the
5 investigation and prosecution of the double murder trial the police and prosecutors engaged in a
6 campaign of misconduct, which included misleading the magistrate, falsification, fabrication
7 and concealment of evidence. At one point, the underlying criminal matter was dismissed after
8 a state criminalist admitted that he gave false testimony about the prosecution’s key evidence
9 and laboratory tests during a preliminary hearing. Nonetheless, prosecutors re-filed the charges
10 and the case reached trial. Jurors took less than two days to return a verdict of not guilty on two
11 counts of murder and one count of burglary.

12 2. This case also addresses the defendants’ actions involving an ongoing conspiracy
13 and practice of withholding and concealing exculpatory evidence in criminal matters, in a
14 wholesale violation of the constitutional rights of the plaintiff. Defendants have engaged in, and
15 continue to engage in, an ongoing pattern of callous, malicious and oppressive disregard for the
16 rights of all citizens, as set forth specifically below. In committing the despicable acts alleged
17 herein, Defendants have deprived the plaintiff of his constitutional rights under the color of
18 authority and law.

GENERAL ALLEGATIONS

19 3. This action arises under the Civil Rights Act of 1871, 42 U.S.C. Sections 1983,
20 1985 and 1988, and the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of
21 the United States. This Court has jurisdiction of the federal claims under 28 U.S.C. Section
22 1331, 1332, 1343(3) 1343(4), 2201, and 2202. This court has pendent jurisdiction over the state
23 claims.

24 4. This action also arises under the California Tort Claims Act (California
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1 Government Code¹ Gov Code §§ 810 et seq), the California Bane Act (California Civil Code² §
2 52.1) and Article I, Sections 13, 15 and 17 of the California Constitution³.

3 5. Plaintiff, ZACHARIAH JUDSON RUTLEDGE (hereinafter "PLAINTIFF") was
4 at all times mentioned herein a citizen of the United States, the State of California and a resident
5 of the County of Sonoma.

6 6. Defendant, COUNTY OF SONOMA (hereinafter "COUNTY") is a political
7 subdivision of the State of California.

8 7. Defendants, COUNTY OF SONOMA, DISTRICT ATTORNEY'S OFFICE OF
9 SONOMA COUNTY (hereinafter "DA'S OFFICE"), and SONOMA COUNTY SHERIFF'S
10 DEPARTMENT (hereinafter "SHERIFF"), acting through its agents and employees, hereinafter
11 named, under the color of law, statute, ordinance, regulation, custom or usage, and with the
12 apparent authority of the COUNTY OF SONOMA, DISTRICT ATTORNEY'S OFFICE OF
13 SONOMA COUNTY, and SONOMA COUNTY SHERIFF'S DEPARTMENT, violated
14 PLAINTIFF'S Fourth, Fifth, Sixth and Fourteenth Amendment rights under the United States
15 Constitution, in violation of 42 U.S.C. §§ 1983, 1985 and his rights under Article I, Sections 13,
16 15 and 17 of the Cal Const.

17 8. The acts of the defendants that constitute deprivation of PLAINTIFF'S civil
18 rights and are the basis of the claims in this action include, in part:

19 a. Denial of Fourth, Fifth and Fourteenth Amendment rights:

20 i. By unlawfully and wrongfully seizing PLAINTIFF'S person without probable cause,
21 causing his unlawful detention and incarceration on serious charges based on facts that they
22 knew or should have known were false;

23 ii. By unlawfully and wrongfully seizing PLAINTIFF'S person in clear violation of due
24 process.

25 ¹ California Government Code is hereinafter "CGC".

26 ² California Civil Code is hereinafter "CCC".

³ California Constitution is hereinafter "Cal Const".

b. Denial of Fourth, Fifth and Fourteenth Amendment rights:

i. By knowingly and willfully submitting false data and evidence regarding an investigation that led to PLAINTIFF'S arrest;

ii. By knowingly and willfully uttering false testimony at PLAINTIFF'S preliminary hearing that led to PLAINTIFF'S holding order on murder charges;

iii. By conspiring to suborn perjured police and forensic criminalist testimony;

iv. By knowingly, willfully, and wrongfully concealing information that would have assisted PLAINTIFF in his defense against serious criminal charges.

c. Denial of PLAINTIFF'S Fourth, Fifth, Sixth and Fourteenth Amendment rights:

i. By failing to timely disclose "Brady" material, exculpatory evidence, to PLAINTIFF'S defense counsel;

ii. By concealing discoverable information from PLAINTIFF'S defense counsel;

iii. By presenting, permitting and encouraging known perjured testimony to be produced at PLAINTIFF'S preliminary hearing and trial in the underlying criminal matter.

9. Defendant, SENIOR CRIMINALIST MICHAEL POTTS (hereinafter "POTTS"), and DOES 1 through 10, are sued herein in their individual capacities, were, in performing the acts alleged herein, acting under the color of law as agents of the California Department of Justice Bureau of Forensic Services (hereinafter "DOJ"), employed by DOJ, in an individual capacity, within the course and scope of their employment, and in performing all of the acts alleged herein, Defendants acted under color of the statutes, ordinances, regulations, customs and usages of the DOJ, and under the official policy, custom and practice of DOJ.

10. Defendant, MICHAEL POTTS', official duties as a SENIOR CRIMINALIST, under the California Department of Justice was to conduct investigations of crimes and to conduct examinations of crime scenes for physical evidence, and in complex cases make all types of chemical analyses such as alcohol determinations, toxicological analyses of foods and body viscera and fluids; test for drugs and explosives, and various types of microchemical tests; make the difficult microscopic, chemical, and serological tests on blood and other physiological fluid stains; identify and compare hair, fibers, soil, paint, glass, building materials and other

1 substances in forensic cases; make visual, microscopic and other technical examinations and
2 comparisons of tool marks, firearms and other weapons, bullets, cartridge cases and
3 ammunition; make casts; make and develop photographs and photomicrographs using black and
4 white and color films; use complex measuring, recording and testing instruments and devices;
5 prepare evidence and exhibits and testify in court as expert witnesses; assist local law
6 enforcement officers and prosecutors in analyzing and interpreting evidence; write reports and
7 correspondence; give instruction in this field at peace officer training schools; and provide
8 forensic research, application, advanced casework, methodology development, and training to
9 State and/or local forensic scientists and law enforcement agencies, as defined by California
10 State Personnel Board.

11 11. Defendants, DETECTIVE RUSSEL L. DAVIDSON (hereinafter
12 "DAVIDSON") and DOES 11 - 20 were employed by the SONOMA COUNTY SHERIFF'S
13 DEPARTMENT at the time PLAINTIFF was arrested and incarcerated and are sued herein in
14 their individual capacities, as they were acting according to individual and/or official capacities,
15 in the course and scope of their duty, and in performing all of the acts alleged herein,
16 Defendants acted under color of state law and under the official policy, custom and practice of
17 SONOMA COUNTY SHERIFF'S DEPARTMENT.

18 12. Defendants, MICHAEL POTTS (hereinafter "POTTS") and DOES 1 through 10,
19 sued herein in their individual capacities, were, in performing the acts alleged herein, acting as
20 agents of THE SONOMA COUNTY SHERIFF'S DEPARTMENT, and acting according to
21 individual capacities, within the course and scope of their duty, and in performing all of the acts
22 alleged herein, Defendants acted under color of the statutes, ordinances, regulations, customs
23 and usages of the SONOMA COUNTY SHERIFF'S DEPARTMENT, and under the official
24 policy, custom and practice of the SONOMA COUNTY SHERIFF'S DEPARTMENT.

25 13. Defendants, DISTRICT ATTORNEY J. MICHAEL MULLINS (hereinafter
26 "MULLINS"), DISTRICT ATTORNEY STEPHAN R. PASSALACQUA (hereinafter
"PASSALACQUA"), DEPUTY DISTRICT ATTORNEY JAMES PATRICK CASEY

1 (hereinafter "CASEY"), DEPUTY DISTRICT ATTORNEY GREG JACOBS (hereinafter
2 "JACOBS"), ASSISTANT DISTRICT ATTORNEY CHRISTINE M. COOK (hereinafter
3 "COOK"), and DOES 21 – 30, are sued herein in their individual capacities, were employed by
4 the DISTRICT ATTORNEY'S OFFICE OF SONOMA COUNTY⁴ (hereinafter "D.A.'s
5 OFFICE"), or were acting according to individual and/or official capacities, within and outside,
6 the course and scope of their employment, and, in performing all of the acts alleged herein,
7 Defendants acted under color of the statutes, ordinances, regulations, customs and usages of the
8 D.A.'s OFFICE, and under the official policy, custom and practice of the D.A.'s OFFICE.

9 14. Defendants, DISTRICT ATTORNEY J. MICHAEL MULLINS and DISTRICT
10 ATTORNEY STEPHAN R. PASSALACQUA, are sued herein in their individual capacities,
11 were in performing the acts alleged herein, also acting as agents of the DISTRICT
12 ATTORNEY'S OFFICE OF SONOMA COUNTY, in a supervisor capacity, were acting
13 according to individual and/or official capacities, in the course and scope of their employment,
14 in performing the acts alleged herein that are connected to their supervisory duties within the
15 D.A.'s OFFICE, and acted under color of the statutes, ordinances, regulations, customs and
16 usages of the D.A.'s OFFICE, and under the official policy, custom and practice of the D.A.'s
17 OFFICE.

18 15. Defendants, DEPUTY DISTRICT ATTORNEY JAMES PATRICK CASEY and
19 DEPUTY DISTRICT ATTORNEY GREG JACOBS, are sued herein in their individual
20 capacities, were in performing the acts alleged herein, also acting as agents of the DISTRICT
21 ATTORNEY'S OFFICE OF SONOMA COUNTY, in an investigative capacity, and were
22 acting according to individual and/or official capacities, in the course and scope of their duty
23 and employment, and acting outside the scope of their duty, in performing the acts alleged
24 herein that are connected to their investigative duties within the D.A.'s OFFICE, Defendants
25 acted under color of the statutes, ordinances, regulations, customs and usages of the D.A.'s

26 ⁴ DISTRICT ATTORNEY'S OFFICE OF SONOMA COUNTY is hereinafter "D.A.'s OFFICE".

1 OFFICE, and under the official policy, custom and practice of the "D.A.'s OFFICE.

2 16. Defendants, DEPUTY DISTRICT ATTORNEY JAMES PATRICK CASEY and
3 DEPUTY DISTRICT ATTORNEY GREG JACOBS, are sued herein in their individual
4 capacities, were in performing the acts alleged herein, also acting as agents of the SONOMA
5 COUNTY SHERIFF'S DEPARTMENT, and were acting in an investigative capacity,
6 according to individual and/or official capacities, in the course and scope of their duty; and in
7 performing all of the acts alleged herein, Defendants acted under color of the statutes,
8 ordinances, regulations, customs and usages of the SONOMA COUNTY SHERIFF'S
9 DEPARTMENT, and under the official policy, custom and practice of the SONOMA COUNTY
10 SHERIFF'S DEPARTMENT.

11 17. The true names and capacities of Defendants DOES 1 through 30 are unknown
12 to the PLAINTIFF. Each of these fictitiously named parties has acted as agent of or in concert
13 with the named defendants in the matters referred to herein and is responsible in some manner
14 for the damages suffered by PLAINTIFF. PLAINTIFF will amend this complaint to add the
15 names and capacities of such defendants when ascertained.

16 **FACTUAL ALLEGATIONS**

17 18. On, or about, August 3, 2000, POTTS authored a forensic laboratory report,
18 which concerned his forensic examination of the evidence seized from the scene of the
19 homicide in the underlying criminal matter, and items collected from PLAINTIFF'S residence.
20 POTTS reported that the paint on the knife had the same color and color layer sequence, and the
21 same type of paint as the paint on the samples collected from RUTLEDGE'S residence.

22 19. POTTS stated facts that were false for the purposes of connecting PLAINTIFF to
23 a double murder, which occurred on, or about, October 23, 1998. The false facts were included
24 in the forensic laboratory report with malice and reckless disregard of the truth. Said facts will
25 be pled in further detail at paragraph 23 (C).

1 20. On, or about, May 8, 2002, CASEY, commanded DAVIDSON to draft a
2 Declaration in Support of Warrant of Arrest, which was dated May 8, 2002.

3 21. On, or about, May 8, 2002, CASEY ordered DAVIDSON to arrest PLAINTIFF.

4 22. On, or about, May 8, 2002 DAVIDSON authored a Declaration in Support of
5 Warrant of Arrest, which was dated May 8, 2002, under the direct supervision of CASEY.

6 23. The May 8, 2002, Declaration in Support of Warrant of Arrest, submitted by
7 DAVIDSON to the magistrate, included statements which provided that:

8 A.) On October 27, 2008, BECKER, a witness in the underlying criminal matter, provided
9 statements to DAVIDSON that connected Plaintiff to the purchase of 7.62 x 39 mm
10 ammunition on Monday, October 5, 1998, prior to the murders. On September 7, 1999,
11 BECKER provided statements that connected petitioner to a knife that was consistent with
12 the knife discovered at the scene of the crime. On September 7, 1999, she also provided
13 statements that showed that Petitioner "lost" his knife during the month of the murders.

14 Specifically, some of the statements attributed to BECKER in the Narrative were as follows:

15 "On October 30, 1998, at 2:00 P.M., DEBBIE BECKER from
16 King's Sport and Tackle telephoned me as a follow-up to my
17 inquiry at their store. She told me that a person named "ZACK,"
age 21 to 22 years with red/blond hair, purchased 7.62 x 39mm
ammunition on Monday, October 5, 1998."

18 "[On or about September 7, 1999,] BECKER estimated that
19 RUTLEDGE came in to the store about two to two-and-a-half
20 weeks before the homicides. BECKER recalled that she provided
me with the exact date that Rutledge purchased that ammunition.
21 She recalled this because she referenced a calendar when she
called me on October 30, 1998. [.....] RUTLEDGE was also
22 wearing a knife in a sheath on his right hip. She stated that the
knife was contained in a brown sheath, which was attached to his
23 belt. [...] BECKER stated that RUTLEDGE came into the store
and paid cash for either two or three boxes of TCW 7.62 x 39 mm
24 caliber ammunition."

25 "[On or about September 7, 1999,] She stated that she recently
26 learned that his full name is ZACH RUTLEDGE. She described

1 him as a strange guy who bought that same caliber of ammunition
2 that I previously inquired about at their store. On that occasion
3 during the purchase, "ZACK" had knife on his right side. After
4 the homicides, the same subject came into the store looking at
knives in their display case. BECKER recognized him and asked
him what happened to his other knife to which the subject replied
that he had lost it."

5 B.) On September 27, 2008, JAMES LEWIS JR., a witness in the underlying criminal
6 matter, provided statements to DAVIDSON, suggesting that defendant was the owner of a
7 knife that was similar to one located at the crime scene. Specifically, the statements
8 attributed to LEWIS in the Narrative are as follows:

9 "James stated that two weeks before the murders, Rutledge
10 telephoned James from a bar and told him that Jason had "sucker
11 punched" him. Rutledge went to James' house where they shared
12 some marijuana. Rutledge told James that "Jason kicked my ass."
13 James stated that Rutledge owned a knife with a sheath and that
14 James had borrowed it from Rutledge. After the previous
15 conversation, Rutledge called James and asked him for his knife
16 back. Rutledge asked James where he could get his hands on a
gun, preferably an "SK." Rutledge told him he needed to go
hunting and asked James if he could borrow his binoculars. James
never knew Rutledge to hunt. About two hours later, Rutledge
arrived at James' s residence and retrieved the knife.

17 "James' description of Rutledge's knife is consistent with the knife
18 collected as #CF-1, including the fact that the strap on the sheath
19 went over the thumb guard. I showed him a photograph of Item
20 #CF-1 and he stated "Nope, that's it." I pointed out the blue
21 substance on the tip and asked him if it was present when he had it.
He stated he sharpened it and there was nothing blue on the blade.
I asked James if he ever saw the knife and sheath that he returned
to Rutledge again. He stated, "Nope, 'Cept for uh, when I opened
up the newspaper and it was there."

22 C.) In August 2000 MICHAEL POTTS, submitted a forensic report which provided that
23 PLAINTIFF was the owner of a knife found at the scene of the murders. Specifically, one of
24 the statements, within the report, attributed to POTTS in the Narrative is as follows:

25 "In August 2000, I received a report from California Department
26 of Justice Senior Criminalist, Michael L. Potts. His report details

1 his microscopic examination of the blade of the knife (CF-1),
2 which revealed paint consisting of four different colored layers: 1)
3 a blue-colored topcoat, over 2) a turquoise layer, covering 3) a
4 white layer, followed by 4) a tan colored bottom layer. Further
5 analysis of this paint showed it to be an architectural type paint.
6 Paint of similar type, color, and color layer sequence was also
7 found in the piece of plaster board of Item RD-27 and on the wood
8 of Item RD-30a, collected from RUTLEDGE's residence.
9 Therefore, the paint on the knife could have come from a source
10 painted with the same color paint and with the same layer
11 sequence as the paint on Items RD-27 and RD-30a."

12 24. The aforementioned statements identified within Paragraph 23 were false.

13 25. CASEY, POTTS, and DAVIDSON agreed to present a false affidavit containing
14 false evidence to the magistrate through the Declaration in Support of Warrant of Arrest that
15 was dated May 8, 2002.

16 26. DAVIDSON possessed knowledge that statements contained within the
17 Declaration in Support of Warrant of Arrest were false, including those statements attributed to
18 POTTS, LEWIS, and BECKER.

19 27. POTTS possessed knowledge that statements attributed to himself, which were
20 contained within the Declaration in Support of Warrant of Arrest, were false.

21 28. CASEY possessed knowledge that statements contained within the Declaration
22 in Support of Warrant of Arrest were false.

23 29. CASEY and DAVIDSON agreed to omit known exculpatory evidence from the
24 Declaration in Support of Warrant of Arrest in an effort to deceive and mislead the magistrate
25 into issuing the requested Arrest Warrant attached to PLAINTIFF.

26 30. DAVIDSON omitted exculpatory evidence from the Declaration in Support of
Warrant of Arrest Made in an effort to deceive and mislead the magistrate into issuing the
requested Arrest Warrant attached to PLAINTIFF.

31. DAVIDSON omitted from the affidavit the fact that the statements made by
BECKER were made after a July 13, 1999 press release issued by the Sonoma County Sheriff,

1 which released photographs of the knife and asked for assistance in the investigation of the
2 murders, while also offering a \$100,000.00 reward for information in the case.

3 32. DAVIDSON omitted from the affidavit the fact that he knew that the statements
4 attributed to BECKER were unreliable and false, and failed to inform the magistrate that the
5 statements made by BECKER were not reliable, since she may have been seeking to recover the
6 \$100,000.00 reward offered by the victim's estate.

7 33. DAVIDSON omitted from the affidavit the fact that he knew that the statements
8 attributed to JAMES LEWIS JR. were unreliable and false.

9 34. DAVIDSON omitted from the affidavit the fact that he knew that the statements
10 attributed to POTTS were false.

11 35. POTTS omitted from the affidavit the fact that he knew that the statements
12 attributed to himself were false.

13 36. On, or about, May 8, 2002, CASEY made the decision to arrest PLAINTIFF.

14 37. On, or about, May 8, 2002 CASEY, DAVIDSON and DOES 11-20 arrested
15 PLAINTIFF.

16 38. During PLAINTIFF'S arrest, DAVIDSON and DOES 11-20 used law
17 enforcement authority to effectuate the arrest, and detention, with the use of handcuffs, and a
18 threat of lethal force.

19 39. On, or about, May 8, 2002 CASEY, DAVIDSON and DOES 11-20 imprisoned
20 PLAINTIFF.

21 40. Plaintiff was held captive and imprisoned under a threat of lethal force, and
22 while imprisoned, Plaintiff, was subjected to threats of physical force, and beatings, was
23 subjected to the use of handcuffs, and was confined and locked in a cell.

24 41. On, or about, May 8, 2002 CASEY, DAVIDSON and DOES 11-20 unlawfully
25 searched PLAINTIFF'S residence, pursuant to an invalid search warrant. CASEY, DAVIDSON
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1 and DOES 11-20 possessed knowledge that the search warrant was not valid at the time of the
2 search.

3 42. At no time during PLAINTIFF'S arrest did any of the officers have probable
4 cause to arrest PLAINTIFF.

5 43. PLAINTIFF did not consent to his detention or his arrest, nor did he resist in any
6 manner.

7 44. PLAINTIFF did not consent to a search of his residence at any time.

8 45. On, November 15, 2002, POTTS provided false testimony at PLAINTIFF'S
9 preliminary hearing in the underlying criminal matter, wherein POTTS testified that "the paint
10 on the knife matches the paint on the other two items [items from PLAINTIFF'S residence], not
11 only in color, but also layer sequence and type of paint." POTTS further testified that: "we're
12 talking about separate layers and four different colored layers as well. And also the paint on this
13 is the architectural type paint in that it's different in chemical composition from paint that you
14 would find like, for instance, on automobiles and things of that nature," and "It not only
15 matches in color, in other words, the color of the paint on People's 13 and 13 is the same as the
16 paint on the knife, but also it's layer sequence, and the colors of each of those layers is the same
17 that appears on the knife matches the same chemical composition of each of those layers that
18 you can see on People's 12 and 13."

19 46. Prior to the November, 2002, preliminary hearing in the underlying criminal
20 matter, PLAINTIFF requested the prosecution to disclose all laboratory bench notes, and
21 analyses connected to the forensic examination of the paint samples.

22 47. On October 30, 2002, the Court, in the underlying criminal matter, ordered the
23 prosecution to provide in whatever form they exist, that is any and all notes pertaining to
24 forensic tests or analysis performed in this case.

1 48. Prior to the November, 2002, preliminary hearing in the underlying criminal
2 matter, POTTS informed CASEY and DAVIDSON that there was only one article on paint
3 comparison in scientific literature that he was able to find. POTTS told DAVIDSON that the
4 article allowed him to come to a scientific opinion which could be presented at the preliminary
5 hearing. POTTS told DAVIDSON that the article may not apply to the case because of its
6 extreme age, being 40 plus years old, and because of the fact that it came from a completely
7 different country, Wales. (The study will be hereinafter identified as the Wales Study.) POTTS
8 also told CASEY that the study might not be applicable to the Rutledge case.

9 49. Prior to the November, 2002, preliminary hearing in the underlying criminal
10 matter, CASEY read the Wales Study, and found that the article was a foundation for a strong
11 buttress of the tests done on the paint samples.

12 50. During the November, 2002, preliminary hearing in the underlying criminal
13 matter, POTTS testified that the paint on the knife and the wallboard matched, since all four
14 layers matched between the paint on the knife and wallboard, and based upon the Wales Study
15 there was a million to one chance that the paint would match.

16 51. Prior to the November, 2002, preliminary hearing in the underlying criminal
17 matter, CASEY refused to disclose all of POTTS' bench notes and refused to disclose the Wales
18 Study.

19 52. Prior to the November, 2002, preliminary hearing in the underlying criminal
20 matter, POTTS informed CASEY that he needed to perform additional tests on the paint in
21 order to confirm, or eliminate, the match between the paint on the knife and the paint on the
22 samples retrieved from PLAINTIFF'S residence.

23 53. CASEY concealed from PLAINTIFF that POTTS required additional tests.

24 54. In the month of April, 2004, PLAINTIFF discovered POTTS' concealment of
25 exculpatory evidence, when PLAINTIFF'S defense investigator Chris Reynolds discovered a
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1 memo which was written by POTTS to Deputy District Attorney James Casey (said memo is
2 hereinafter "Jim/Mike note"), which stated that he is releasing only a third of his forensic
3 laboratory notes he had regarding his investigation of the evidence in the underlying criminal
4 matter. The Jim/Mike note was accidentally discovered by Chris Reynolds when reviewing
5 mental health records submitted to prosecution mental health expert Park Dietz by the
6 prosecution at the office of Park Dietz in southern California in April 2004. The Jim/Mike note
7 was drafted just prior to the preliminary examination, and was sent to the office of Park Dietz
8 after JACOBS took over the criminal case from CASEY.

9 55. JACOBS did not disclose the Jim/Mike note to PLAINTIFF during the
10 underlying criminal matter.

11 56. JACOBS knew about the falsity of the statistical evidence provided by POTTS,
12 JACOBS still sought to introduce testimony of POTTS at trial, used the statistical evidence in
13 support of his opposition to petitioner's motions and repeatedly told the Court that he had given
14 PLAINTIFF all exculpatory evidence. JACOBS never disclosed that Potts's testimony was
15 false as to the use of statistics or in any way attempted to correct the statistical testimony of
16 POTTS.

17 57. Despite JACOBS' knowledge that the statistical evidence was false he continued
18 to hide the fact through a contrivance of representing to the Court he was not seeking to present
19 that testimony at trial.

20 58. JACOBS continued to fail to correct this false evidence despite having been
21 urged by the Department of Justice itself that full disclosure be made.

22 59. The Jim/Mike note was never produced by any member of the prosecutorial team
23 of the underlying criminal matter.

24 60. On January 27, 2004, POTTS provided assistant district attorney JACOBS
25 information, wherein POTTS admitted to presenting false testimony at the preliminary
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1 examination of the underlying criminal matter. More particularly, POTTS sent a January 27,
2 2004, letter to JACOBS, at the direction of JACOBS, in which POTTS stated that “In review of
3 the transcript of my testimony at the preliminary hearing on November 15, 2002, I realize I had
4 over-simplified the explanation regarding the examinations I conducted on the knife and the
5 wood molding.” POTTS stated in his letter that he mislead the Magistrate when he testified that
6 he conducted a chemical analysis on the paint on the molding, stating:

7 “My response on page 172, lines 21 through 24, [of the preliminary examination
8 transcript] implies that I conducted a chemical analysis of the paint on the
9 molding. In fact, I had only performed a microscopical computation of the paint
on the knife with the paint on the molding.”

10 POTTS further stated in his letter that he mislead the Magistrate at the preliminary
11 examination when he testified that he performed an analysis on each individual colored layers
12 of paint on the knife, stating:

13 “Furthermore, in reviewing the transcript, it could be interpreted that I performed
14 an analysis on each individual colored layer of paint on the knife. In fact, because
15 the paint on the knife was in the form of a smear, I was unable to fully separate
16 the paint transfers into distinct individual layers; and therefore, analysis was
conducted on more than one layer at the time.”

17 61. On May 19, 2004, POTTS clarified, during a pretrial motion in the underlying
18 criminal matter, that he did not conduct a separate analysis on each individual paint layer on the
19 knife.

20 62. The precise date when PLAINTIFF discovered the January 27, 2004, letter from
21 POTTS to JACOBS is unknown at this time.

22 63. During the second preliminary hearing of the underlying criminal matter, the
23 Prosecution offered the statements of JAMES LARRY LEWIS, JR. as evidence linking the
24 PLAINTIFF to the crimes charged.

1 64. On, or about, March 26, 2006, during an interview of JAMES LARRY LEWIS,
2 JR., by PLAINTIFF'S investigator, PLAINTIFF discovered that the statements made by
3 LEWIS to DAVIDSON in the underlying criminal action, and the statements that he made
4 during the preliminary hearing, were false.

5 65. During the April 2006, preliminary hearing in the underlying criminal matter, the
6 People offered the statements of BECKER as evidence linking the Petitioner to the crimes
7 charged.

8 66. On April 21, 2006, at the conclusion of the preliminary hearing, the Court found
9 that the People offered sufficient evidence to hold Petitioner to answer.

10 67. During the prosecution of the underlying criminal matter JACOBS knew of the
11 existence of exculpatory evidence and that it was in the possession of the prosecutorial team.
12 The PLAINTIFF requested the exculpatory evidence from the prosecutor during the prosecution
13 of the underlying criminal matter. JACOBS interfered with the disclosure of the exculpatory
14 evidence and knowingly withheld the exculpatory evidence. JACOBS continued to withhold
15 the exculpatory evidence despite having been urged by the Department of Justice (DOJ)
16 that full disclosure be made.

17 68. On June 30, 2006, Chief Deputy District Attorney Diana E. Gomez submitted
18 PEOPLE'S PROPOSED WITNESS LIST for the trial in the underlying criminal matter. The
19 witness list included James Lewis, Jr., Deborah Becker and Mike Potts.

20 69. The trial in the underlying criminal matter began, on or about, August 4, 2006
21 and ended on September 29, 2006. (hereinafter "TRIAL.")

22 70. During the trial, PLAINTIFF discovered that the statements made by DEBBIE
23 BECKER were false. PLAINTIFF also discovered during the TRIAL, that BECKER made the
24 false statements in an attempt to claim the \$100,000.00 reward announced by the Sonoma
25 County Sheriff on or about July 13, 1999.

26

1 71. During the TRIAL, PLAINTIFF discovered that the statements made by
2 DAVIDSON, which were attributed to DEBBIE BECKER were false. PLAINTIFF also
3 discovered during the trial, that DAVIDSON knew that the statements he attributed to DEBBIE
4 BECKER were false.

5 72. Additionally, during the TRIAL, PLAINTIFF discovered that DAVIDSON,
6 knowingly withheld evidence from the magistrate during the preliminary hearing and within the
7 search warrant affidavit that demonstrated that DEBBIE BECKER made the false statements in
8 an attempt to claim the \$100,000.00 reward.

9 73. Furthermore, during the TRIAL, PLAINTIFF discovered that the October 30,
10 1998, statement attributed to BECKER, within the Declaration in Support of Warrant of Arrest,
11 was false. Said statement provided evidence that BECKER made statements connected to
12 PLAINTIFF, prior to the July 13, 1999, announcement of the \$100,000.00 reward. PLAINTIFF
13 also discovered during the TRIAL, that DAVIDSON knew that said statements he attributed to
14 BECKER were false.

15 74. During the TRIAL, PLAINTIFF further discovered that the statements made by
16 DAVIDSON, which were attributed to JAMES LARRY LEWIS, JR. were false. PLAINTIFF
17 also discovered during the TRIAL, that DAVIDSON knew that the statements he attributed to
18 JAMES LARRY LEWIS, JR. were false.

19 75. During the prosecution of the underlying criminal matter CASEY had knowledge
20 of the existence of exculpatory evidence that was in the possession of the prosecutorial team.
21 The PLAINTIFF requested the exculpatory evidence from the prosecutor during the prosecution
22 of the underlying criminal matter. CASEY knowingly withheld the exculpatory evidence.

23 76. CASEY and JACOBS entered into an agreement to withhold the exculpatory
24 evidence during the prosecution of the underlying criminal matter.

1 77. D.A.'s OFFICE has presented a history and pattern of practice of withholding
2 exculpatory evidence, which was addressed by the Sonoma County Grand Jury.

3 78. MULLINS, in a supervisory capacity, failed to establish procedures and
4 regulations to ensure communication of all relevant information on each case to every lawyer
5 who deals with a criminal matter; failed to supervise or train assistant district attorneys to
6 disclose exculpatory evidence; and failed to supervise or train assistant district attorneys to
7 refrain from the use of perjured testimony while engaging in the prosecution of criminal
8 matters.

9 79. MULLINS, in a supervisory capacity, enacted and/or maintained policies within
10 D.A.'s OFFICE that established discovery procedures that interfered with the disclosure of
11 exculpatory evidence to defendants in a criminal action.

12 80. PASSALACQUA, in a supervisory capacity, failed to establish procedures and
13 regulations within the D.A.'s OFFICE to ensure communication of all relevant information on
14 each case to every lawyer who deals with it; failed to supervise or train assistant and deputy
15 district attorneys on the disclosure of exculpatory evidence during the prosecution of criminal
16 cases; and failed to supervise or train assistant district attorneys to refrain from the use of
17 perjured testimony while engaging in the prosecution of criminal matters, which perpetuated the
18 D.A.'s OFFICE'S policy to conceal exculpatory evidence from a defendant in a criminal matter
19 being prosecuted by the D.A.'s OFFICE.

20 81. MULLINS and PASSALACQUA, in their supervisory capacity, maintained
21 policies within the D.A.'s OFFICE which established discovery procedures that interfered with
22 the disclosure of exculpatory evidence to defendants in a criminal action.

23 82. Defendants, COUNTY, D.A.'s OFFICE, and SONOMA COUNTY SHERIFF'S
24 DEPARTMENT, failed to supervise or properly train the individual defendants, each of them,

25

26

1 and through their lack of proper supervision and training permitted these individuals to commit
2 some or all of the acts complained of in the preceding paragraphs.

3 83. Defendants, COUNTY, D.A.'s OFFICE, and SONOMA COUNTY SHERIFF'S
4 DEPARTMENT, violated the PLAINTIFF'S civil rights under the Fifth, Sixth and Fourteenth
5 Amendments to the United States Constitution, as follows:

6 a. In failing to prevent the individual defendants, each of them, from using falsified
7 evidence and withholding exculpatory evidence in criminal matter, after learning that
8 these officers and agents had falsified evidence, and withheld exculpatory evidence
from criminal defendants;

9 b. In failing to timely notify the PLAINTIFF that these officers and agents had
10 falsified evidence, the individual defendants, each of them, withheld exculpatory
11 evidence from PLAINTIFF, and had knowledge of the problem or should have
known the problem existed;

12 c. In failing to notify the PLAINTIFF'S attorney that defendants, each of them, were
13 falsifying evidence in their case files.

14 84. The DISTRICT ATTORNEY'S OFFICE OF SONOMA COUNTY, and
15 SONOMA COUNTY SHERIFF'S DEPARTMENT are agencies of the COUNTY OF
16 SONOMA and functions under the umbrella of the Sonoma county government. Therefore, the
17 acts and policies of the police department are, in effect, the acts and policies of the COUNTY
18 OF SONOMA.

19 85. As a result of the actions of the Defendants, each of them, PLAINTIFF was
20 arrested, held for approximately four years in jail without bail, was forced to stand trial, and was
21 found to be not guilty of all counts by a jury of his peers and was released on September 29,
22 2006.

23 86. While PLAINTIFF was in the custody of the SONOMA COUNTY SHERIFF'S
24 DEPARTMENT and the COUNTY OF SONOMA, PLAINTIFF suffered injury and illness.
25 PLAINTIFF requested medical care to treat the illness and injury. PLAINTIFF was denied
26 adequate medical care, resulting in injury to his health, strength, and activity, sustaining injury

1 to his nervous system, skeletal system, and person, all of which injuries have caused, and
2 continue to cause PLAINTIFF great mental and physical pain and suffering. PLAINTIFF is
3 informed and believes and thereon alleges that such injuries will result in some permanent
4 disability to him.

5 87. On, or about, October 10, 2006, COOK issued statements to a radio broadcast,
6 where she provided public statements which were presented to the public as facts, which in her
7 words were "to set the record straight on a few points." COOK stated that PLAINTIFF was not
8 found innocent, stating specifically, "finding a person not guilty, does not mean they are
9 innocent." COOK also stated that that PLAINTIFF miserably failed the polygraph test
10 connected to the double murder investigation. COOK'S false statements regarding the
11 polygraph examination were more particularly, "Mr. Rutledge took a polygraph examination.
12 He, uh, it was a valid polygraph examination. He was represented by counsel who authorized
13 his taking of that examination and he failed it miserably, the worst results that Department of
14 Justice Examiner had ever seen in her career." The forgoing statement is false. COOK made
15 further statements implying that PLAINTIFF was guilty of murder, being more particularly
16 stating that "when they found him not guilty, they did not find him innocent."

17 88. On, or about, October 27, 2006, PLAINTIFF demanded in writing that COOK
18 retract all false statements made by COOK, on or about, October 10, 2006.

19 89. COOK failed to retract said statements.

20 90. PLAINTIFF filed timely claims for damages with both COUNTY and the State
21 of California, which possess jurisdiction over all defendants. Said claims were subsequently
22 denied and the complaint filed in this case was filed within a six-month period after the denials.

23 91. As a result solely of the acts of the defendants, PLAINTIFF was denied
24 fundamental rights, was deprived of liberty, and was forced to answer criminal charges of the
25 most heinous nature.

26

1 92. In addition, PLAINTIFF was forced to undergo the mental anguish and strain of
2 these proceedings and will bear lasting and permanent mental scars of the ordeal, in addition to
3 a permanent scar to his standing in the community.

4 93. The acts of the defendants, each of them, were wanton, willful, unlawful,
5 malicious, vicious, and without regard for the system of justice in these United States.

6 **ACCRUAL OF ACTION FOR FALSE ARREST**

7 94. As alleged herein, allegations in support of probable cause, within the
8 Declaration in Support of Warrant of Arrest, were based upon statements attributed to POTTS,
9 DEBBIE BECKER, and JAMES LEWIS JR, each of which, if were true, would independently
10 support probable cause for arrest.

11 95. As alleged herein, on May 8, 2002, DAVIDISON submitted to the magistrate his
12 Declaration in Support of Warrant of Arrest.

13 96. As alleged herein, DAVIDISON possessed knowledge that the statements,
14 within his Declaration in Support of Warrant of Arrest, that were attributed to POTTS, DEBBIE
15 BECKER, and JAMES LEWIS JR. were false.

16 97. At some point in time after January 27, 2004, as alleged herein, PLAINTIFF
17 discovered that the statements attributed POTTS were knowingly false.

18 98. At some point during, or after, the month of April 2004, as alleged herein,
19 PLAINTIFF discovered that DEFENDANTS deliberately withheld exculpatory evidence from
20 the magistrate, which would have mitigated statements attributed POTTS.

21 99. On or about March 26, 2006, as alleged herein, PLAINTIFF discovered that the
22 statements attributed JAMES LEWIS JR, were knowingly false.

23 100. During the TRIAL, as alleged herein, PLAINTIFF discovered that the statements
24 attributed BECKER were knowingly false.

1 101. During the TRIAL, as alleged herein, PLAINTIFF discovered that
2 DEFENDANTS deliberately withheld exculpatory evidence from the magistrate, which would
3 have mitigated statements attributed BECKER.

4 102. Therefore, PLAINTIFF could not allege a cause of action for false arrest until the
5 time of the TRIAL, when PLAINTIFF discovered that the statements attributed to BECKER
6 and/or LEWIS were knowingly false.

7
8 **TOLLING – WHILE CRIMINAL CHARGES WERE PENDING**

9 103. California State Personnel Board, provides that a CRIMINALIST employed by
10 the Department of Justice an investigator.

11 104. California Penal Code § 830.1 (b) provides that investigators of the Department
12 of Justice are peace officers.

13 105. POTTS is employed by the Department of Justice as SENIOR CRIMINALIST,
14 therefore, POTTS was a peace officer.

15 106. California Government Code § 945.3 provides that any applicable statute of
16 limitations for filing and prosecuting a civil action for money or damages against a peace officer
17 are tolled during the period that the charges are pending before a superior court in the
18 underlying criminal matter.

19 107. Charges were pending before the California Superior Court in the underlying
20 criminal matter, until September 29, 2006.

21 108. Therefore, the statute of limitations for all causes of action alleged herein were
22 tolled until September 29, 2006.

23 **TOLLING – WHILE PLAINTIFF WAS IMPRISONED**

24 109. In California, pursuant to California Code of Civil Procedure § 352.1, a person
25 entitled to bring an action, is, at the time the cause of action accrued, imprisoned on a criminal
26

1 charge, the time of that disability is not a part of the time limited for the commencement of the
2 action, not to exceed two years.

3 110. Plaintiff was imprisoned until September 26, 2006.

4 111. Therefore, if any of the causes of action alleged herein accrued while
5 PLAINTIFF was imprisoned, the statute of limitations of those causes of action are tolled up to
6 two years.

7 **FIRST CAUSE OF ACTION**
8 **INTENTIONAL/NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
9 **Entitling relief under CGC § 810 et seq**
10 **(ALL DEFENDANTS)**

11 112. PLAINTIFF refers to and incorporates herein Paragraphs 1 through 111 above.

12 113. Defendants' conduct was outrageous, intentional and malicious, or at the least
13 grossly negligent, exhibiting a reckless disregard for PLAINTIFF'S rights.

14 114. As a proximate result of the acts of Defendants, each of them, PLAINTIFF
15 suffered severe emotional distress in the form of humiliation, mental anguish, anxiety,
16 emotional distress, alienation and physical distress.

17 115. Defendant's conduct, as herein alleged, was not privileged.

18 116. As a direct and proximate result of defendant's conduct, PLAINTIFF was injured
19 in mind and body and has suffered general damages in an amount to be determined by proof at
20 trial.

21 117. As a further proximate result of the aforementioned acts of Defendants, each of
22 them, PLAINTIFF was required to and did employ physicians to examine, treat and care for
23 PLAINTIFF, and incurred additional medical expenses in amounts not yet ascertained.
24 PLAINTIFF has been informed and believes and thereon alleges that he will incur additional
25 medical expenses in the future, the exact amounts of which are currently unknown.

26 118. By reason of the aforementioned despicable acts of Defendants, each of them,
PLAINTIFF was prevented from attending to his usual business and thereby lost earnings and

1 revenues in amounts not yet ascertained. PLAINTIFF is informed and believes and thereon
2 alleges that he will be deprived from attending to his usual business for a period in the future
3 which cannot yet be ascertained, and will thereby sustain further loss of earning in amounts
4 according to proof.

5 119. As a further direct and proximate result of Defendants' unlawful actions as
6 alleged herein, PLAINTIFF suffered physical, emotional and other monetary damages entitling
7 him to compensation, and damages under the California Tort Claims Act, CGC § 810 et seq.

8
9 **SECOND CAUSE OF ACTION**
10 **FALSE ARREST AND FALSE IMPRISONMENT**
11 **Entitling relief under 42 U.S.C. Sections 1983 and 1985**
12 **(DEFENDANTS: COUNTY OF SONOMA, SONOMA COUNTY SHERIFF'S**
13 **DEPARTMENT, CASEY, JACOBS, DAVIDSON, and POTTS)**

14 120. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1
15 through 119 above.

16 121. As herein alleged, PLAINTIFF was falsely arrested by Defendants. COUNTY,
17 SHERIFF, CASEY, DAVIDSON and POTTS, under color of law, and unlawfully held captive
18 against his will without valid warrant or any valid order of commitment or any other legal
19 authority of any kind. PLAINTIFF was arrested pursuant to an invalid arrest warrant, which
20 was issued without probable cause pursuant to an affidavit, which contained materially false
21 information and omitted exculpatory information, which without the inclusion of the false
22 information, and/or exclusion of exculpatory information, within the supporting affidavit, the
23 warrant would not have issued. Said false statements and omissions were made in conscious
24 disregard for the truth and/or were intentionally made by DAVIDSON, POTTS AND CASEY,
25 knowing said statements to be false, and knowing the existence of said exculpatory evidence.
26 For the forgoing reasons, Defendants, each of them, falsely arrested PLAINTIFF in violation of
PLAINTIFF'S civil rights under the Fourth Amendment.

1 122. As herein alleged, PLAINTIFF was also unlawfully and falsely imprisoned, by
2 Defendants, each of them, against his will, without valid warrant or any valid order of
3 commitment or any other legal authority of any kind. Under a color of law COUNTY,
4 SHERIFF, CASEY, DAVIDSON and POTTS imprisoned PLAINTIFF pursuant to an invalid
5 arrest warrant, which was issued without probable cause pursuant to a falsified affidavit in
6 violation of PLAINTIFF'S civil rights under the Fourth Amendment. PLAINTIFF continued to
7 be imprisoned pursuant to a holding order, which was issued without probable cause pursuant to
8 falsified evidence presented by Defendants to the magistrate, and by the Defendants'
9 withholding and concealment of exculpatory evidence from the magistrate, at both of the
10 preliminary hearings in the underlying criminal matter. For the forgoing reasons, Defendants,
11 each of them, falsely imprisoned PLAINTIFF in violation of PLAINTIFF'S civil rights under
12 the Fourth Amendment.

13 123. As a proximate result of the acts of Defendants as alleged, PLAINTIFF suffered
14 physical and emotional injuries all of which have caused, and continue to cause, PLAINTIFF
15 great mental, physical and nervous pain and suffering. PLAINTIFF is informed and believes
16 and thereon alleges that these injuries will result in some permanent disability to him. As a
17 result of these injuries, PLAINTIFF has suffered general damages in amounts not yet
18 ascertained.

19 124. As a further proximate result of Defendants' acts, PLAINTIFF has been damaged
20 in that he has been required to expend money and incur obligations for legal services, medical
21 services, drugs, and other sundries reasonably required in the treatment and relief of the injuries
22 herein alleged in amounts not yet ascertained.

23 125. As a further proximate result of the acts of Defendants, PLAINTIFF has
24 incurred, and will continue to incur, legal, medical and related expenses. The full amount of the
25 aforementioned expenses are not known to PLAINTIFF at this time.

26

1 126. As a further proximate result of the acts of defendant, PLAINTIFF was
2 prevented from attending to his usual occupation and thereby lost earnings to his damage in
3 amounts not yet ascertained.

4 127. As a further proximate result of Defendants' actions, PLAINTIFF'S present and
5 future earning capacity has been greatly impaired in amounts not yet ascertained.

6 128. The aforementioned acts of Defendants in falsely arresting and imprisoning
7 PLAINTIFF were willful and malicious, or grossly negligent, and were intended to oppress and
8 cause injury to PLAINTIFF.

9 129. As a further direct and proximate result of Defendants' unlawful actions, which
10 were willful, wanton, malicious and oppressive or negligent as alleged herein, PLAINTIFF
11 suffered physical, emotional and other damages entitling him to compensation under 42 U.S.C.
12 Sections 1983 and 1985 according to proof, as well as reasonable attorneys fees incurred in
13 pursuing these claims under 42 U.S.C. Section 1988.

14
15 **THIRD CAUSE OF ACTION**
16 **FALSE ARREST**

17 **Entitling relief under CGC § 810 et seq, and CCC § 52.1**
18 **(DEFENDANTS: COUNTY OF SONOMA, SHERIFF, CASEY, DAVIDSON, POTTS)**

19 130. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1
20 through 129 above.

21 131. On or about, May 8, 2002 defendant's CASEY and DAVIDSON executed an
22 arrest warrant for the arrest of PLAINTIFF. The arrest warrant was obtained in violation of
23 State Constitution Article I Section 13 in that DAVIDSON, under the orders and direction of
24 CASEY, presented to a magistrate a false affidavit in support of the arrest warrant that
25 contained materially false information, which without its inclusion in the supporting affidavit
26 the warrant would not have issued, and omitted exculpatory information, which without the
exclusion of exculpatory information the warrant would not have issued. Said false statements

1 and omissions were made in conscious disregard for the truth and/or were intentionally made by
2 Defendants knowing said statements to be false.

3 132. As herein alleged, PLAINTIFF was also falsely arrested by Defendants,
4 COUNTY, and POTTS, and unlawfully held captive against his will, maliciously and without
5 valid warrant or any order of commitment or any other legal authority of any kind by
6 COUNTY, CASEY, DAVIDSON and POTTS. PLAINTIFF was arrested and imprisoned
7 pursuant to an invalid arrest warrant, which was issued without probable cause pursuant to a
8 falsified affidavit in violation of his Fourth Amendments rights provided by the Constitution of
9 the United States and Article I Section 13 of the California Constitution.

10 133. The arrest and imprisonment was made without PLAINTIFF'S consent, lawful
11 authority and without privilege.

12 134. The false arrest and imprisonment was made under color of law and was
13 accomplished by the use of threats, intimidation, or coercion.

14 135. As a proximate result of the acts of Defendants as alleged, PLAINTIFF suffered
15 physical and emotional injuries all of which have caused, and continue to cause, PLAINTIFF
16 great mental, physical and nervous pain and suffering. PLAINTIFF is informed and believes
17 and thereon alleges that these injuries will result in some permanent disability to him. As a
18 result of these injuries, PLAINTIFF has suffered general damages in amounts not yet
19 ascertained.

20 136. As a further proximate result of Defendants' acts, PLAINTIFF has been damaged
21 in that he has been required to expend money and incur obligations for legal services, medical
22 services, drugs, and other sundries reasonably required in the treatment and relief of the injuries
23 herein alleged in amounts not yet ascertained.

1 137. As a further proximate result of the acts of Defendants, PLAINTIFF has
2 incurred, and will continue to incur, legal, medical and related expenses. The full amount of the
3 aforementioned expenses are not known to PLAINTIFF at this time.

4 138. As a further proximate result of the acts of defendant, PLAINTIFF was
5 prevented from attending to his usual occupation and thereby lost earnings to his damage in
6 amounts not yet ascertained.

7 139. As a further proximate result of Defendants' actions, PLAINTIFF'S present and
8 future earning capacity has been greatly impaired in amounts not yet ascertained.

9 140. The aforementioned acts of Defendants in falsely arresting and imprisoning
10 PLAINTIFF were willful and malicious, or grossly negligent, and were intended to oppress and
11 cause injury to PLAINTIFF.

12 141. As a further direct and proximate result of Defendants' unlawful actions as
13 alleged herein, PLAINTIFF suffered physical and emotional and other monetary damages
14 entitling him to compensation, and punitive damages under the California Tort Claims Act,
15 CGC § 810 et seq and the California Bane Act, CCC § 52.1.

16
17 **FOURTH CAUSE OF ACTION**
18 **FALSE IMPRISONMENT**
19 **Entitling relief under CGC § 810 et seq, and CCC § 52.1**
20 **(DEFENDANTS: COUNTY OF SONOMA, SHERIFF, CASEY,**
21 **JACOBS, DAVIDSON, and POTTS)**

22 142. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1
23 through 141 above.

24 143. On or about, May 8, 2002 defendant's SHERIFF, CASEY and DAVIDSON
25 executed an arrest warrant for the arrest of PLAINTIFF. The arrest warrant was obtained in
26 violation of State Constitution Article I Section 13 in that DAVIDSON, under the orders and
direction of CASEY, presented to a magistrate a false affidavit in support of the arrest warrant
that contained materially false information, which without its inclusion in the supporting

1 affidavit the warrant would not have issued. Said false statements were made in conscious
2 disregard for the truth and or were intentionally made by DAVIDSON knowing said statements
3 to be false.

4 144. As herein alleged, PLAINTIFF was falsely arrested by Defendants, COUNTY,
5 SHERIFF, CASEY, DAVIDSON and POTTS, and unlawfully held captive against his will and
6 falsely imprisoned maliciously and without valid warrant or any order of commitment or any
7 other legal authority of any kind.

8 145. As herein alleged, PLAINTIFF was falsely imprisoned by Defendants,
9 COUNTY, SHERIFF, CASEY, JACOBS, DAVIDSON and POTTS, and unlawfully held
10 captive against his will and falsely imprisoned maliciously and without valid warrant or any
11 order of commitment or any other legal authority of any kind.

12 146. The arrest and imprisonment was made under color of law and was accomplished
13 by the use of threats, intimidation, or coercion.

14 147. As a proximate result of the acts of Defendants as alleged, PLAINTIFF suffered
15 physical and emotional injuries all of which have caused, and continue to cause, PLAINTIFF
16 great mental, physical and nervous pain and suffering. PLAINTIFF is informed and believes
17 and thereon alleges that these injuries will result in some permanent disability to him. As a
18 result of these injuries, PLAINTIFF has suffered general damages in amounts not yet
19 ascertained.

20 148. As a further proximate result of Defendants' acts, PLAINTIFF has been damaged
21 in that he has been required to expend money and incur obligations for legal services, medical
22 services, drugs, and sundries reasonably required in the treatment and relief of the injuries
23 herein alleged in amounts not yet ascertained.

1 149. As a further proximate result of the acts of Defendants, PLAINTIFF has
2 incurred, and will continue to incur, legal, medical and related expenses. The full amount of the
3 aforementioned expenses are not known to PLAINTIFF at this time.

4 150. As a further proximate result of the acts of defendant, PLAINTIFF was
5 prevented from attending to his usual occupation and thereby lost earnings to his damage in
6 amounts not yet ascertained.

7 151. As a further proximate result of Defendants' actions, PLAINTIFF'S present and
8 future earning capacity has been greatly impaired in amounts not yet ascertained.

9 152. The aforementioned acts of Defendants in falsely arresting and imprisoning
10 PLAINTIFF were willful and malicious, or grossly negligent, and were intended to oppress and
11 cause injury to PLAINTIFF.

12 153. As a further direct and proximate result of Defendants' unlawful actions as
13 alleged herein, PLAINTIFF suffered physical and emotional and other monetary damages
14 entitling him to compensation, and damages under the California Tort Claims Act, CGC § 810
15 et seq, and compensation, and damages under the California Bane Act, CCC § 52.1.

16
17 **FIFTH CAUSE OF ACTION**
18 **FALSE IMPRISONMENT – COMMON LAW TORT**
19 **Entitling relief under CGC § 810 et seq and CCC § 52.1**
20 **(DEFENDANTS COUNTY OF SONOMA, SHERIFF, CASEY,**
21 **JACOBS, DAVIDSON, and POTTS)**

22 154. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1
23 through 153 above.

24 155. As herein alleged, PLAINTIFF was falsely arrested by Defendants, COUNTY,
25 SHERIFF, CASEY, DAVIDSON and POTTS, unlawfully held PLAINTIFF captive against his
26 will and falsely imprisoned PLAINTIFF maliciously and without valid warrant or any order of
commitment or any other legal authority of any kind.

1 156. On or about, May 8, 2002 defendant's CASEY and DAVIDSON executed an
2 arrest warrant for the arrest of PLAINTIFF. The arrest warrant was obtained in violation of
3 State Constitution Article I Section 13 in that DAVIDSON, under the orders and direction of
4 CASEY, presented to a magistrate a false affidavit in support of the arrest warrant that
5 contained materially false information, which without its inclusion in the supporting affidavit
6 the warrant would not have issued. Said false statements were made in conscious disregard for
7 the truth and or were intentionally made by DAVIDSON knowing said statements to be false.

8 157. As herein alleged, PLAINTIFF was falsely imprisoned by Defendants,
9 COUNTY, SHERIFF, CASEY, JACOBS, DAVIDSON and POTTS, and unlawfully held
10 captive against his will and falsely imprisoned maliciously and without valid warrant or any
11 order of commitment or any other legal authority of any kind.

12 158. The arrest and imprisonment was made under color of law and was accomplished
13 by the use of threats, intimidation, or coercion.

14 159. As a proximate result of the acts of Defendants as alleged, PLAINTIFF suffered
15 physical and emotional injuries all of which have caused, and continue to cause, PLAINTIFF
16 great mental, physical and nervous pain and suffering. PLAINTIFF is informed and believes
17 and thereon alleges that these injuries will result in some permanent disability to him. As a
18 result of these injuries, PLAINTIFF has suffered general damages in amounts not yet
19 ascertained.

20 160. As a further proximate result of Defendants' acts, PLAINTIFF has been damaged
21 in that he has been required to expend money and incur obligations for legal services, medical
22 services, drugs, and other sundries reasonably required in the treatment and relief of the injuries
23 herein alleged in amounts not yet ascertained.

1 161. As a further proximate result of the acts of Defendants, PLAINTIFF has
2 incurred, and will continue to incur, legal, medical and related expenses. The full amount of the
3 aforementioned expenses are not known to PLAINTIFF at this time.

4 162. As a further proximate result of the acts of defendant, PLAINTIFF was
5 prevented from attending to his usual occupation and thereby lost earnings to his damage in
6 amounts not yet ascertained.

7 163. As a further proximate result of Defendants' actions, PLAINTIFF'S present and
8 future earning capacity has been greatly impaired in amounts not yet ascertained.

9 164. The aforementioned acts of Defendants in falsely arresting and imprisoning
10 PLAINTIFF were willful and malicious, or grossly negligent, and were intended to oppress and
11 cause injury to PLAINTIFF.

12 165. As a further direct and proximate result of Defendants' unlawful actions as
13 alleged herein, PLAINTIFF suffered physical and emotional and other monetary damages
14 entitling him to compensation, and punitive damages under the California Tort Claims Act,
15 CGC § 810 et seq. and compensation and damages under the California Bane Act, CCC § 52.1,
16 for the common law tort of false imprisonment.

17 **SIXTH CAUSE OF ACTION**
18 **DEFAMATION, SLANDER AND LIBEL**
19 **Entitling relief under CGC § 810 et seq**
 (DEFENDANT COOK)

20 166. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1
21 through 165 above.

22 167. On or about, October 10, 2006, defendant COOK committed acts, outside the
23 scope of her official duties, which consisted of issuing a false and unprivileged publication
24 which exposed PLAINTIFF to hatred, contempt, ridicule, disgrace, which caused PLAINTIFF
25 to be shunned, avoided and injured his occupation.

1 168. The false and unprivileged publication made by COOK concerning PLAINTIFF
2 was made with her knowledge that it was false or with reckless disregard as to whether it was
3 false or not.

4 169. On or about, October 27, 2006, PLAINTIFF demanded defendant COOK to
5 retract and correct the false and unprivileged publication made by COOK concerning
6 PLAINTIFF.

7 170. Defendant COOK failed to correct the false and unprivileged publication
8 concerning the PLAINTIFF.

9 171. Defendant COOK made the false and unprivileged publication concerning the
10 PLAINTIFF in the deliberate and successful attempt to destroy PLAINTIFF'S present and
11 future employment, reputation and family relationships.

12 172. Defendant's conduct was not only outrageous, it was intentional and malicious,
13 exhibiting a reckless disregard for PLAINTIFF'S rights, causing PLAINTIFF to suffer
14 humiliation, mental anguish, stress and emotional and physical distress and PLAINTIFF was
15 injured financially, and injured in mind and body, all to his damage in amounts according to
16 proof.

17 173. Defendant's conduct was also intentional and malicious, exhibiting a reckless
18 disregard for PLAINTIFF'S rights, causing PLAINTIFF to suffer humiliation, mental anguish,
19 stress and emotional and physical distress. Defendant was therefore guilty of malice,
20 oppression amounting to despicable conduct so as to justify an award of exemplary or punitive
21 damages.

22 174. As a further direct and proximate result of Defendants' unlawful actions as
23 alleged herein, PLAINTIFF suffered physical and emotional and other monetary damages
24 entitling him to compensation, and punitive damages under the California Tort Claims Act,
25 CGC § 810 et seq and CCC §§ 44-48a.

26

1
2 **SEVENTH CAUSE OF ACTION**
3 **CONSPIRACY PURSUANT TO 42 U.S.C. §§ 1983 and 1985**
4 **(ALL DEFENDANTS)**

5 175. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1
6 though 174 above.

7 176. In a combination of two or more persons, Defendants acted in concert to commit
8 an individual act, or a lawful act by unlawful means, to deprive plaintiff of a protected right and
9 to inflict a wrong against or injury upon PLAINTIFF. In committing the individual act, or a
10 lawful act by unlawful means, the Defendants made an agreement to inflict a wrong against or
11 injury upon PLAINTIFF.

12 177. Defendants further obstructed justice by conspiring to deter, by force,
13 intimidation, or threat, a witness in the Superior Court of California from testifying to a matter
14 pending in the underlying criminal matter, and to prevent a witness from testifying freely, fully,
15 and truthfully, and/or to injure said witness in his person or property on account of his having so
16 attended or testified, or to influence the presentment of the underlying criminal matter at the
17 preliminary hearing and/or subsequent pre-trial hearings and/or trial.

18 178. Defendant's further obstructed justice by conspiring for the purpose of impeding,
19 hindering, obstructing, or defeating, the due course of justice in the underlying criminal matter,
20 with intent to deny to the plaintiff his right to due process and the equal protection of the laws.

21 179. As a result of the Defendants' acts, PLAINTIFF was deprived of his
22 constitutional right to be free from unlawful searches and seizures, and his right to be free from
23 violence or intimidation, and deprived of his right to equal protection, and due process.

24 180. Defendants' conduct was not only outrageous, it was intentional and malicious,
25 exhibiting a reckless disregard for PLAINTIFF'S rights, causing PLAINTIFF to suffer
26 humiliation, mental anguish, stress and emotional and physical distress and PLAINTIFF was

1 injured financially, and injured in mind and body, all to his damage in amounts according to
2 proof.

3 181. Defendants' conduct was also intentional and malicious, exhibiting a reckless
4 disregard for PLAINTIFF'S rights, causing PLAINTIFF to suffer humiliation, mental anguish,
5 stress and emotional and physical distress. Defendants were therefore guilty of malice,
6 oppression amounting to despicable conduct entitling him to compensation under 42 U.S.C.
7 Sections 1983 and 1985 according to proof, as well as reasonable attorneys fees incurred in
8 pursuing these claims under 42 U.S.C. Section 1988.

9
10 **EIGHTH CAUSE OF ACTION -**
11 **VIOLATION OF CONSTITUTIONAL RIGHTS – PROCEDURAL DUE PROCESS**
12 **CLAIMS, TO WIT: DENIAL OF A FAIR TRIAL**
13 **Entitling relief under 42 U.S.C. Sections 1983 and 1985**
14 **(ALL DEFENDANTS EXCEPT POTTS)**

15 182. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1
16 through 181 above.

17 183. As alleged herein, Defendants, each of them, withheld exculpatory evidence, and
18 *Brady Material*, from PLAINTIFF, during the prosecution of the underlying criminal matter.

19 184. The aforementioned acts of Defendants were willful and malicious, or grossly
20 negligent, and were intended to oppress and cause injury to PLAINTIFF.

21 185. As a direct and proximate result of Defendants' unlawful actions as alleged
22 herein, PLAINTIFF was, under a color of law, deprived of his due process right to a fair trial,
23 and his Fifth Amendment right to due process of the law as applied to the states under the
24 Fourteenth Amendment.

25 186. As a further direct and proximate result of Defendants' unlawful actions, which
26 were willful, wanton, malicious and oppressive or negligent as alleged herein, PLAINTIFF
suffered physical and emotional and other monetary damages entitling him to compensation

1 under 42 U.S.C. Sections 1983 and 1985 according to proof, as well as reasonable attorneys
2 fees incurred in pursuing these claims under 42 U.S.C. Section 1988.

3
4 **NINTH CAUSE OF ACTION -**
5 **VIOLATION OF CONSTITUTIONAL RIGHTS –TO WIT: DENIAL OF A FAIR TRIAL**
6 **AND DENIAL OF DUE PROCESS**
7 **Entitling relief under CCC § 52.1 and CGC § 810 et seq**
8 **(ALL DEFENDANTS)**

9 187. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1
10 through 187 above.

11 188. As alleged herein, Defendants, each of them, withheld exculpatory evidence, and
12 *Brady Material*, from PLAINTIFF, during the prosecution of the underlying criminal matter.

13 189. The aforementioned acts of Defendants were willful and malicious, or grossly
14 negligent, and were intended to oppress and cause injury to PLAINTIFF.

15 190. As a direct and proximate result of Defendants' unlawful actions as alleged
16 herein, PLAINTIFF was deprived of his due process right to a fair trial, and his Fifth
17 Amendment right to due process of the law as applied to the states under the Fourteenth
18 Amendment.

19 191. As a direct and proximate result of Defendants' unlawful actions as alleged
20 herein, PLAINTIFF was deprived of his due process right to a fair trial, and his right to due
21 process of the law as provided by the Constitution of the State of California, Article I, Section
22 15.

23 192. The constitutional violations alleged herein were made under color of law and
24 was accomplished by the use of threats, intimidation, or coercion.

25 193. As a further direct and proximate result of Defendants' unlawful actions as
26 alleged herein, PLAINTIFF suffered physical and emotional and other monetary damages
entitling him to compensation, and punitive damages under the California Tort Claims Act,
CGC § 810 et seq and the California Bane Act, CCC § 52.1.

1
2 **TENTH CAUSE OF ACTION**
3 **VIOLATION OF CONSTITUTIONAL RIGHTS BY FAILING TO ADEQUATELY**
4 **TRAIN AND SUPERVISE DEPUTY DISTRICT ATTORNEYS**
5 **Entitling relief under 42 U.S.C. Sections 1983 and 1985**
6 **(DEFENDANTS: COUNTY, DA'S OFFICE, and MULLINS)**

7 194. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1
8 through 193 above.

9 195. Defendants COUNTY, DA'S OFFICE, and MULLINS had knowledge of the
10 constitutional violations alleged herein, and/or should have known, and had constructive
11 knowledge of the constitutional violations, because the violations were so prevalent that the
12 supervisor should have known of them in the proper exercise of his duties.

13 196. Defendants, COUNTY, DA'S OFFICE, and MULLINS, failed to rectify the
14 violations, and failed to adequately train or supervise subordinate employees in order to prevent
15 the constitutional violations.

16 197. As a direct and proximate result of defendant's unlawful actions as alleged
17 herein, PLAINTIFF was deprived of his Fourth Amendment Right to be free from unreasonable
18 search and seizure and to be free from from cruel and unusual punishment as a pre-trial
19 detainee, and his Fifth Amendment right to due process of the law as applied to the states under
20 the Fourteenth Amendment.

21 198. As a further direct and proximate result of defendant's unlawful actions as
22 alleged herein, PLAINTIFF suffered physical and emotional and other monetary damages
23 entitling him to compensation under 42 U.S.C. Sections 1983 and 1985 according to proof, as
24 well as reasonable attorneys fees incurred in pursuing these claims under 42 U.S.C. Section
25 1988.
26

ELEVENTH CAUSE OF ACTION
VIOLATION OF CONSTITUTIONAL RIGHTS BY FAILING TO ADEQUATELY
TRAIN AND SUPERVISE DEPUTY DISTRICT ATTORNEYS
Entitling relief under 42 U.S.C. Sections 1983 and 1985
(DEFENDANTS: COUNTY, DA'S OFFICE, and PASSALACQUA)

199. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1 through 198 above.

200. Defendants, COUNTY, DA'S OFFICE, and PASSALACQUA, had knowledge of the constitutional violations alleged herein, and/or should have known, and had constructive knowledge of the constitutional violations, because the violations were so prevalent that the supervisor should have known of them in the proper exercise of his duties.

201. Defendants, COUNTY, DA'S OFFICE, and PASSALACQUA, failed to rectify the violations, and failed to adequately train or supervise subordinate employees in order to prevent the constitutional violations.

202. As a direct and proximate result of defendant's unlawful actions as alleged herein, PLAINTIFF was deprived of his Fourth Amendment Right to be free from unreasonable search and seizure and to be free from cruel and unusual punishment as a pre-trial detainee, and his Fifth Amendment right to due process of the law as applied to the states under the Fourteenth Amendment.

203. As a further direct and proximate result of defendant's unlawful actions as alleged herein, PLAINTIFF suffered physical and emotional and other monetary damages entitling him to compensation under 42 U.S.C. Sections 1983 and 1985 according to proof, as well as reasonable attorneys fees incurred in pursuing these claims under 42 U.S.C. Section 1988.

TWELTH CAUSE OF ACTION
FOURTH AMENDMENT MALICIOUS PROSECUTION
UNDER *ALBRIGHT V. OLIVER*, 510 U.S. 266
AND COMMON LAW TORT
Entitling relief under 42 U.S.C. Sections 1983 and 1985, and
CCC § 52.1 and CGC § 810 et seq
(ALL DEFENDANTS)

204. PLAINTIFF refers to and incorporates herein the allegations in Paragraphs 1 through 203 above.

205. The constitutional violations alleged herein were made under color of law and was accomplished by the use of threats, intimidation, or coercion.

206. As a direct and proximate result of Defendants' unlawful conscience-shocking actions as alleged herein, PLAINTIFF was deprived of liberty without due process of law, in that Defendants intentionally or with reckless indifference fabricated, falsified evidence to provide the appearance of probable cause to hold plaintiff on murder charges and withheld evidence that would enable PLAINTIFF to prove his innocence and/or terminate the underlying criminal case at the preliminary hearing stage, and/or other pretrial stage of said criminal case.

207. As a direct and proximate result of Defendants' unlawful actions plaintiff suffered four years of detention and great humiliation, ridicule, and mental anguish.

208. As a further direct and proximate result of defendant's unlawful actions as alleged herein, PLAINTIFF suffered physical and emotional and other monetary damages entitling him to compensation under 42 U.S.C. Sections 1983 and 1985 according to proof, as well as reasonable attorneys fees incurred in pursuing these claims under 42 U.S.C. Section 1988.

209. As a further direct and proximate result of Defendants' unlawful actions as alleged herein, PLAINTIFF suffered physical and emotional and other monetary damages entitling him to compensation, and punitive damages under the California Tort Claims Act, CGC § 810 et seq and the California Bane Act, CCC § 52.1.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a trial by jury on all of the above causes of action.

WHEREFORE, PLAINTIFF prays for the following relief as to all causes of action:

- A. A judgment awarding PLAINTIFF general, damages to plaintiff in an amount to be determined by the trier of fact as sufficient to compensate the plaintiff for the injuries described in this complaint;
- B. An award of punitive damages to plaintiff in an amount to be determined by the trier of fact as sufficient to punish each defendant against whom these damages are awarded and sufficient to deter similar conduct in the future by these defendants;
- C. A judgment awarding PLAINTIFF reasonable attorneys fees;
- D. A judgment awarding PLAINTIFF his costs of suit; and
- E. Such other and further relief as the Court deems proper.

Dated: July 28, 2008

_____/s/_____
Editte Lerman
Attorney for Plaintiff
ZACHARIAH JUDSON RUTLEDGE

DECLARATION OF SERVICE

I, Editte D. Lerman, declare as follows:

I am a resident of the State of California, residing or employed in Mendocino, California.
I am over the age of 18 years and am not a party to the above-entitled action. My business address is 45060 Ukiah Street P.O. Box 802, Mendocino C.A. 95460.

On July 29, 2008,

THIRD AMENDED COMPLAINT FOR DAMAGES FOR: VIOLATION OF CIVIL RIGHTS INTENTIONAL/NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS; FALSE ARREST AND IMPRISONMENT; UNLAWFUL SEIZURE; SLANDER AND LIBEL; AND FOR DAMAGES UNDER THE CALIFORNIA BANE ACT AND THE CALIFORNIA TORT CLAIMS ACT

was filed and served upon the following parties via the Court's PACER-ECF electronic filing system.

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Santa Rosa, CA 95402-3729

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 29th day of July, 2008, at Mendocino, California.

-----/s/-----
Edite Lerman